IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 550 OF 2003

Mr. Alex Venancio Almeida,
aged 56 years, Manager,
Central Bank of India,
Kakoda Branch, Kakoda-Goa
(presently working at
Margao Branch). ... Petitioner

versus

1. Central Bank of India,
   Central Office Mumbai
   "Chandramukhi" Building,
   Nariman Point,
   Mumbai - 400 021.

2. The Chairman/M.D.,
   Central Bank of India,
   "Chandramukhi" building,
   11th floor, Nariman Point,
   Mumbai - 400 021.

3. The General Manager
   personnel,
   Central Bank of India,
   "Chandramukhi" building,
   17th floor, Nariman Point,
   Mumbai-400 021.

4. Zonal Manager,
   Central Bank of India,
   Mumbai Metro Zonal Office,
   Standard Building,
   D. N. road,
   Mumbai - 400 023.

5. N. W. Chari,
   Trezanal Manager,
   Mascarenhas building,

1st floor, Antonio De
Noronha Road, Panaji,
Goa - 403 001.

Mr. M. S. Sonak and Ms. A. Salkar, Advocates for the Petitioners.

Mr. S. D. Lotlikar, Senior Advocate with Ms. S. Dessai, Advocate for Respondent Nos.1 to 5.

CORAM : SMT. NISHITA MHATRE &
P. V. HARDAS, JJ.

DATE : 9TH FEBRUARY, 2004.

ORAL JUDGMENT(PER SMT.NISHITA MHATRE,J.)

Rule. Rule made returnable forthwith.

2. By this Petition, the Petitioner impugns the action of the Respondent Bank of not accepting his application for voluntary retirement under the Voluntary Retirement Scheme formulated by the Bank in 2001.

3. The Voluntary Retirement Scheme known as the "Central Bank of India Employees Voluntary Retirement Scheme-2001(CBIEVRS-2001) was formulated on 31st January, 2001. Those employees who wished to avail of the Scheme were required to apply for the same within

the period from 22nd February, 2001 upto 8th March, 2001, when the Scheme was to remain in operation. The eligibility criteria had been drawn up under the Scheme. Under Clause 9.5, of the CBIEVRS-2001, an employee who applied for Voluntary Retirement could not withdraw his request after exercising such option. Under Clause 9.6, the Bank had absolute discretion either to accept or reject the request of an employee seeking voluntary retirement depending upon the requirement of the Bank. However, it was made clear that the concerned employee would be informed about the status of his application, either acceptance or rejection, through proper channel. Under Clause 4.2 of the Scheme, certain employees were not eligible to seek voluntary retirement. Clause 4.2 stipulates that employees against whom disciplinary proceedings are contemplated or pending or under suspension would not be able to seek voluntary retirement.

4. The Petitioner applied for voluntary retirement under the Scheme on 22nd February, 2001. All the requisite forms which were to be filled up by the employees to avail of the Scheme were submitted by the Petitioner. Although, this exercise was undertaken by the Petitioner in February, 2001 itself, the Petitioner

was not informed about the status of his application as was required under Clause 9.6 within a reasonable time. In December, 2001, a charge-sheet was issued to the Petitioner alleging that the Petitioner had committed certain acts of mis-conduct while working as a Manager at the Margao Branch from 4th November, 1996 to 17th January, 2000. Thereafter, an enquiry was instituted against the Petitioner. The Petitioner was exonerated from the charges levelled against him by the Enquiry Officer and the findings of the Enquiry Officer were accepted by the Disciplinary Authority on 5th July, 2002. Thus, the Petitioner had been exonerated of all the allegations contained in the charge-sheet. During the pendency of the enquiry proceedings, the Petitioner received a communication from the Deputy Manager of the Respondent Bank stating that in terms of Clause 4.2(d) of the CBIEVRS-2001, he was ineligible to apply under the Scheme and, therefore, his application could not be processed.

5. From 27th August, 2002 till 15th April, 2003, the Petitioner made several representations to the Bank for considering his application dated 22nd February, 2001 for voluntary retirement in view of the fact that he had been exonerated by the Disciplinary Authority.

As the Bank did not consider it necessary to reply to any of the representations made by the Petitioner, on 30th May, 2003, the Petitioner sent a resignation letter to the Bank. He informed the Bank that his resignation would take effect after three months and that the letter should be considered as a notice in accordance with the Rules and Regulations applicable. In reply to this letter, the Respondent Bank, through their Regional Manager informed the Petitioner that since the Petitioner had already submitted an application for voluntary retirement under the CBIEVRS-2001 which had not been accepted till then, the Petitioner was required to furnish an undertaking stating that his application for resignation was in supersession of his application for voluntary retirement and that he would not make any claim for the benefit under the CBIEVRS-2001 Scheme to which he was otherwise eligible. The Petitioner was also informed that unless he received a specific communication relieving him, from the Zonal Office he continued to be in service of the Bank. On 25th June, 2003, the Petitioner withdrew his letter of resignation dated 30th May, 2003 and requested the Respondent Bank to process his application for voluntary retirement under the CBIEVRS-2001 Scheme. Despite this letter and a further representation dated 9th August, 2003, the Petitioner's application has not been considered by the

Respondent Bank. Hence, this Petition.

6. Mr. M. S. Sonak, learned Counsel appearing for the Petitioner submits that there was no material either in the Affidavit filed by the Regional Manager of the Bank or any other document to show that any disciplinary proceeding was contemplated against the Petitioner and, therefore, he was ineligible under Clause 4.2(d) of the Scheme. He submits that in fact, the letter of 7th June, 2003, issued by the Regional Manager is unambiguous and recognises the fact that the Petitioner was in fact eligible for the Scheme but was required to give an undertaking that the letter of resignation was in supersession to his application for the Voluntary Retirement Scheme. The learned Counsel urges that it was incumbent on the Bank to inform applicants for the CBIEVRS-2001, within a reasonable time whether their applications had been accepted or rejected. The learned Counsel relies on the Judgments in the case of **Manjushree Pathak v. Assam Industrial Development Corpn. Ltd. and others** reported in (2000) 7 SCC 390 and in **Bank of India and others** v **O.P. Swarnakar and others** reported in (2003) 2 SCC 721 to support his arguments that a Voluntary Retirement Scheme was applicable to the Petitioner and he was eligible for the same. He further submits that the action initiated

against the Petitioner by way of disciplinary proceedings was an afterthought and was taken only with a view to deprive the Petitioner of the Voluntary Retirement Scheme.

7. Mr. S. D. Lotlikar, learned Counsel appearing for the Respondent Bank submits that it was the prerogative of the Bank to refuse or accept an application for voluntary retirement. The Petitioner, not being found eligible under Clause 4.2(d), it was open for the Bank to have refused his application. He submits that the communication dated 8th March, 2002, which refuses the Petitioner the Voluntary Retirement Scheme has not been impugned in this Petition and, therefore, the Petitioner cannot seek any relief in this Petition. In the application dated 8th March, 2002, the learned Counsel further submits that once the letter of resignation had been tendered by the Petitioner, the question of availing of the benefit under the CBIEVRS-2001 does not arise. According to the learned Counsel, the letter dated 7th June, 2003, by which the Petitioner was informed that he was required to give an undertaking that the resignation was in supersession to his application for Voluntary Retirement Scheme should not be considered at all. He submits that the

Petitioner was fully aware that his application had been rejected as two batches of employees whose applications were accepted, had been relieved from service. The disciplinary action against the Petitioner was contemplated by the Bank even prior to the introduction of the CBIEVRS-2001 and hence the action of the Bank was justified.

8. Clause 4 of the CBIEVRS-2001 which relates to eligibility reads as under:-

> 4. **ELIGIBILITY:-**
>
> 4.1 All permanent employees of the bank will be eligible to seek voluntary retirement under the scheme provided they meet the following eligibility criteria as on the date of application:-
>
> a). "they have completed 15 years of service in the Bank
>
> OR
>
> b). 40 years of age.
>
> 4.2 However, the employees falling in the following categories are not eligible to seek voluntary retirement under the scheme:-
>
> a). All existing Specialists officers;
>
> b). Officers/employees who have executed service bonds and have not completed it;
>
> c). Employees serving abroad under special arrangements/bonds.

d). Employees against whom disciplinary proceedings are contemplated/pending or who are under suspension.

e). Employees appointed on contract basis.

f). Any other category of employees as may be specified by the Management.

9. There is no dispute that the Petitioner had completed 15 years of service in the Bank. The question is whether he could be considered ineligible because disciplinary proceedings were contemplated/pending or he was under suspension. From the record available before us, we find that there is not even an iota of evidence that any disciplinary proceedings were contemplated against the Petitioner when his application was considered. The Affidavit filed by the Regional Manager of the Respondent Bank is vague. Besides making a bald statement that such action was contemplated against the Petitioner, there is no evidence at all as to when the Bank decided to take action against the Petitioner; what was the action contemplated; and what was the reason for taking such action. In fact, this very Officer has communicated by the letter of 7th June, 2003, that the Petitioner was eligible for the Scheme; it was only because the Petitioner had tendered his resignation, that an undertaking was sought from him that the application for voluntary retirement would not be pressed by him.

10. By communicating to the Petitioner that he was ineligible for the Scheme almost a year after this application, the Respondent Bank has not acted reasonably. As held in the case of **Manjushree Pathak** v. **Assam Industrial Development Corpn. Ltd. and others**(supra) although the Management had discretion to accept or reject the request for voluntary retirement taking into consideration the organisational requirement and any relevant factors, the Management must act fairly. The Supreme Court also observed that the Respondent in that case was an authority falling within the purview of Article 12 of the Constitution and, therefore, could not abdicate its duty to act reasonably, fairly and judiciously in exercise of discretion. In the present case the Bank, which is also a 'State' under Article 12, ought to have communicated to the Petitioner under General Condition 9.6 of the Scheme whether his application had been accepted or rejected within a reasonable time. We do not consider that the time within which the Petitioner was informed that he was ineligible to apply is a reasonable period. In fact, it is obvious that this communication came only after an enquiry was initiated against the Petitioner. Had the enquiry been contemplated earlier, the Respondent Bank would have communicated to the Petitioner much earlier that his application was rejected since there were disciplinary proceedings

contemplated against him. Obviously, the disciplinary proceedings were an afterthought. In any event, the Petitioner has been exonerated in the disciplinary proceedings.

11. Although, the Petitioner in the prayers has not prayed for setting aside the communication dated 8th March, 2002, we do not think it is fatal to the Petition. This letter informed the Petitioner that he was ineligible. The Petitioner has sought a mandamus directing the Respondents to accept his application dated 22nd February, 2001, for voluntary retirement.

12. We cannot accept the submission made by the learned Counsel appearing for the Respondent Bank that there is any acquiescence on the part of the Petitioner to the letter dated 8th March, 2002, merely because a letter of resignation had been tendered by him on 30th May, 2003. In any event, it is the Bank who has communicated to the Petitioner that such a resignation could not be accepted unless he tenders an undertaking and that the same was in supersession of his earlier request for voluntary retirement, for which he was otherwise eligible. The Petitioner acting on that letter has withdrawn his letter of resignation and, therefore, insists on the application for voluntary retirement being accepted.

13. In the circumstances, we are of the view that the Bank has not been reasonable while refusing the Petitioner's application for voluntary retirement. The Bank which is a public body is required to act fairly and reasonably and not in an arbitrary or capricious manner while exercising its discretion. It is obvious that the refusal was for extraneous considerations. By issuance of the charge-sheet, the Respondent Bank had sought to deny the Petitioner the relief sought by him under the Voluntary Retirement Scheme. The Petitioner is already 56 years of age. His vision is impaired due to acute diabetes.

14. In the circumstances, the Petition is allowed. The Respondent Bank is directed to accept the application of the Petitioner for voluntary retirement under the CBIEVRS-2001. The Respondent Bank shall communicate the date of acceptance to the Petitioner within one month from today. Rule made absolute with no order as to costs.

SMT. NISHITA MHATRE, J.

P. V. HARDAS, J.

RD.